

Field Talk

Agricultural Law Briefing • Autumn 2021

Clarkson's Farm bringing the challenges of farming to the fore

When I heard about the new series, Clarkson's Farm, featuring real-life stories from Jeremy Clarkson's farm in the Cotswolds, flashes of Top Gear sprang to mind.

I expected choreographed calamities and controversial comments aplenty and it took some persuading from my colleagues and friends to tune in and give it a go.

When I finally succumbed to curiosity, I was pleasantly surprised. Despite a few set ups, Clarkson seems to genuinely care about his farm and many farmers and other key stakeholders in the agricultural industry have praised it for the honest way in which it has highlighted some of the many issues that farmers have to grapple with on a daily basis. On the recent Back British Farming Day, Minette Batters tweeted: "On behalf of farmers across the UK, I thank [Jeremy Clarkson] from the bottom of my heart for bringing farming to a whole new audience". Praise indeed from the President of the NFU.

But what are some of these issues that Jeremy has highlighted in his TV series and how can we help?

Diversification is not straightforward

After settling into his farming enterprise, Clarkson applied for planning permission to build and run a farm shop from which he could sell his local produce. After some hiccups along the way, the first day of trading was a roaring success despite the available produce being mainly potatoes! However, within a matter of weeks, Clarkson was forced to shut down the shop after it was brought to the council's attention that the shop's

roof contravened the planning permission. This was rectified and the shop re-opened only for the council to then raise issues with the produce being sold in the shop, in particular the ice cream which contravened a clause that the shop only sell produce from West Oxfordshire. The milk used to make the produce came from cows only 8 miles away but just over the border in Gloucestershire. Undoubtedly local but technically a breach!

This really highlights the limitations placed on farmers when they are seeking to diversify, particularly where there are planning restrictions to adhere to.

Farming is the most dangerous job in the world

Very early on in the series, Clarkson highlights how dangerous farming is stating "there are 20 times more deaths in agriculture than there are in all other careers combined". This harrowing statistic emphasises the risks farmers face in their day-to-day lives and serves as a reminder that making those small changes can help to save lives. Thankfully the industry takes the issue very seriously and is supported by charities dedicated to raising awareness of farm safety and also mental well-being in farmers, such as the Farm Safety Foundation.

Continued on page 2.

Welcome to the Autumn 2021 edition of Field Talk



Welcome to the autumn 2021 edition of Field Talk, our agricultural law newsletter.

Not long after the last edition of Field Talk, we bid a fond farewell to senior partners, Tim Hayden and Stuart Thorne. Their retirement comes after many years of devoted and exceptional service to Clarke Willmott and the wider rural community and whilst we were sad to see them leave, we wish them the very best for their well-deserved retirements.

I am honoured to be stepping into Tim's shoes (or should I say wellies?!) as head of the sector and to lead our fantastic team into what is an exciting new era for the agricultural industry.

After many months of pandemic restrictions, we are now looking forward to a return to some normality with the prospect of attending events and meetings in-person instead of virtually. Whilst we continue to work from home effectively, we have missed the face-to-face contact with our clients and referrers which is so key to how we operate as a sector. A number of these events will include the annual NFU open meetings which we will be attending in our capacity as the NFU legal panel firm for Somerset, Gloucestershire, Wiltshire and Dorset. For more information about how we can help NFU members visit www.nfuonline.com/legalpanel

Esther Woolford, October 2021

Clarkson's Farm *continued*

Farming is a family business

Clarkson draws attention to the family nature of farming stating "95% of farms in Europe are run by one farmer or one family". This emphasizes that in most circumstances those farming together are often also living together and / or are related.

Running a business in these circumstances, particularly where there is property and land involved can often create succession issues. This can be further complicated where a younger member of the family has been promised they will inherit the farm in the future and relied on that promise.

Unfortunately, there are lots of disputes in this area where an older member has died and the younger members of the family do not receive what they expected. These disputes can often be avoided if farming families have frank conversations about succession and consider proper estate planning.

How can we help?

Clarke Willmott are well equipped to assist with the issues raised in this article and by Clarkson's Farm generally. We are NFU panel solicitors for Somerset, Gloucestershire, Wiltshire and Dorset and have one of the biggest agricultural teams in the country.

We have specialists who can advise on all legal aspects of farming diversification, whether that be in relation to planning, tax, regulation or property. Our specialist regulatory team can advise on health and safety policies, risk assessments or with proceedings or inquests whilst our private client team is on hand to advise farming families on succession and estate planning and to assist in relation to any dispute which may arise. Check out our dedicated web pages on the subject <https://www.clarkewillmott.com/legal-expertise/agricultural-law/comprehensive-legal-advice-on-farm-diversification/>

For more information about this article and our agricultural legal services generally please contact:



Laura Mackain-Bremner

Senior Associate

0345 209 1549

laura.mackain-bremner@clarkewillmott.com

Farewell Tim and Stuart!

Earlier this year, partners Tim Hayden and Stuart Thorne retired from Clarke Willmott bringing to a close a period of quite outstanding long service to their clients, colleagues and the firm as a whole.

Stuart Thorne joined Clarke Willmott (then Clarke Willmott & Clarke) as an articled clerk in 1977. He became a partner in 1984 and committed the next 30 years or so to building up the private client practice from a local offering to the successful national practice it is today. Stuart hails from a farming family and his background and knowledge of the industry made him one of the key partners in the agriculture sector group specialising in tax and trust law and succession planning for farming families. There are not many farmers or indeed professional referrers in the South West who have not had the pleasure of meeting and getting to know Stuart whether in an advisory capacity or just through his genuinely enthusiastic and personable networking at local shows such as the South West Winter Fair and Bath & West. Whilst Stuart will be greatly missed, his clients and referrers can be reassured that they will continue to be well looked after by partners David Maddock and Tom Chiffers.



Tim Hayden joined Clarke Willmott & Clarke in 1979 and became a partner shortly after Stuart's appointment. Tim's practice focused on advising individuals, public bodies and businesses in all sectors on a range of criminal and regulatory matters and he developed a specialism in advising farmers and agri-businesses on the raft of regulations that govern the sector in relation to animal welfare, pollution/waste, health and safety and licensing for example. Tim was appointed Head of the Agriculture Sector in circa 2014 and remained in post until his departure at the end of April this year. During his tenure, Tim grew the sector in terms of both strength and depth and it is now one of the most diverse agricultural legal services offerings in the UK.

Like Stuart, Tim's network of connections in the South West is impressive, hard earned through years of reputable legal practice accompanied by an unwavering commitment to good old fashioned business development whether that be public speaking, lecturing, prize giving or just simply being seen in the right places.

Tim has handed over the reins of Sector Head to Esther Woolford and his regulatory practice to partner, Daniel Gill at a time when the agricultural industry is undergoing a period of great change and whilst we are sad to say goodbye not only to Tim but also Stuart, we can look forward to an exciting new era for Clarke Willmott's agricultural practice.

If you have any questions about the agriculture sector at Clarke Willmott then please contact:

Victoria Howlett

Marketing & Business Development Manager

0345 209 1719

victoria.howlett@clarkewillmott.com



Photo credit: www.emilyfourphotography.com

Farmers and Business LPAs

Farmers often give a good deal of thought to succession planning with the aim of passing the farm business onto the next generation.

However, consideration should also be given to a possible interim stage: when the farmer is still involved in the business but becomes mentally incapable.

A farming business could face possible paralysis if the farmer is incapable and so a Business Lasting Power of Attorney (LPA) is an essential part of risk management to avoid a possible future crisis.

What is a Business LPA?

A finance LPA is a legal document that gives attorneys power to deal with the finances of the person granting the LPA. One LPA can be drawn up for personal finances and another for the management of a farming business.

The operation of a business LPA varies according to the structure of the farming business:

• Sole traders

Most farmers are sole traders and have no partners or co-directors who can carry on the business. The business may employ younger members of the farmer's family, but they will have no legal authority to run the farm without an LPA. Appointing a business attorney means that someone both trusted and competent can run the business, pay its bills and control the business bank account. If no provision is made, the future of the business could be threatened due to an inability to operate and staff and others might not be paid.

• Partnerships

The farm partnership agreement will have to be considered. This may provide for compulsory retirement from the partnership in the event of incapacity. If there is no partnership agreement, the Partnership Act 1890 provides that the courts can dissolve the partnership if a partner becomes incapable. If neither of these apply, an attorney appointed under a business LPA would be able to act.

• Limited companies

The terms of the company's governing documents, the Articles of Association (Articles), and any shareholders' agreement should be checked.

The Articles are likely to provide that if a director becomes incapacitated, they will no longer be a director. A shareholders' agreement may include potentially adverse provisions, for example an obligation on the individual to offer their shares for sale.

As the position of director is a personal appointment, if a director remains in office despite their incapacity it is not possible to appoint an attorney to make decisions in that capacity, unless the Articles allow this or are amended to allow it. At common law, attorneys can, however, exercise the functions that a director carries out such as paying bills, discharging tax liabilities, filing accounts and maintaining company records; all essential if the farmer is the only director.

Owning shares will usually carry with it voting rights and an attorney would be able to exercise those rights on the farmer's behalf, dependent on the provisions of the Articles or shareholders' agreement.

Choice of attorney

A good choice of attorney is essential. The person appointed should ideally be someone familiar with the farm, and with the requisite knowledge and experience to run the business.

For more information about business LPAs and succession planning in general, please contact:



David Maddock

Partner

0345 209 1205

david.maddock@clarkewillmott.com



Significant shake up of Animal Welfare Laws

Article written by
Samuel Harkness,
Trainee Solicitor - SQE

The UK is a nation of animal lovers and in 1822, it became the first country in the world to implement laws aimed at safeguarding animal welfare.

Although the UK already has some of the strictest animal welfare laws in the world, the Government has committed itself to updating and strengthening them further. This led to the Government publishing its Action Plan for Animal Welfare in May.

The first phase of this Action Plan is going to be implemented through the following:

- The Animal Welfare (Sentience) Bill, which (at the time of drafting this article) is currently before Parliament;
- The Animal Welfare (Kept Animals) Bill, which is also currently working its way through Parliament and
- The Animal Welfare (Sentencing) Act 2021, which has been granted Royal Assent and which will come into force on 29 June 2021

The Animal Welfare (Sentience) Bill

This Bill is designed to formally recognise vertebrate animals as sentient beings in domestic law.

Sentience refers to an animal's capacity to experience different feelings and emotions, as well as an animal's ability to feel pain and suffering. While UK law already recognises causing unnecessary suffering to an animal as a criminal offence, the Bill will take matters a step further by ensuring that future amendments to regulations take into account animal sentience and target cruel practices accordingly.

To that end, the Bill proposes the creation of an Animal Sentience Committee to be composed of animal welfare experts; the purpose of the Committee will be to ensure that policy across all government departments properly considers animal sentience. In addition, the Bill proposes regular ministerial updates to Parliament on any recommendations made by the Animal Sentience Committee.

Animal Welfare (Kept Animals) Bill 2021

This wide-ranging Bill is designed to increase existing standards, increase the ability to enforce those standards and ban some practices completely.

The Bill has five key areas:

- Live exports: The Bill seeks to ban the export of live animals for slaughter and fattening;
- Livestock worrying: this has increased significantly since the beginning of the pandemic as a result of an increase in the numbers of domestic pets and more people walking in the countryside. The Bill seeks to curtail this by:
 - o giving the police increased powers to seize a dog suspected of livestock worrying and which poses a risk of worrying livestock and
 - o giving the courts powers to order the destruction of such a dog; disqualify its owner from owning or keeping dogs; and/or to order the owner to take steps to keep their dog under proper control.
- Puppy smuggling: The Bill seeks to increase the powers available to the authorities to prevent puppy smuggling;
- Zoo licensing: The Zoo Licensing Act 1981 will be amended to increase the regulation of zoos;
- Banning keeping primates as pets: The Bill seeks to ban primates from being kept in any conditions other than zoo-level conditions, to ensure that primates receive specialist care.



Animal Welfare (Sentencing) Act 2021

This law is designed to significantly increase the powers of the courts in dealing with animal welfare cases.

Currently, animal welfare cases can only be dealt with by the Magistrates Court and the maximum sentence for offenders is six months in prison and/or an unlimited fine.

However, from 29 June 2021:

- Serious animal welfare cases will be triable in the Crown Court;
- Offenders convicted in the Crown Court will be subject to a maximum sentence of up to five years in prison and/or an unlimited fine;
- Magistrates Courts sentencing such offenders will have increased sentencing powers and will be able to sentence offenders to up to twelve months imprisonment and/or impose an unlimited fine (or both); and
- Both the Magistrate Court and the Crown Court will be able to disqualify a person convicted of animal welfare offences from keeping animals for such a period as the court thinks fit.

Get in touch

The Government's Action Plan for Animal Welfare is the biggest shake up in animal welfare law for a generation.

In addition to the measures outlined above, the Government has indicated that it will be looking to introduce further measures to tackle pet theft, wildlife crime and that it will be looking to update the existing laws on farm animal welfare.

The Crime and Regulatory team at Clarke Willmott regularly advises and represents people in connection with rural crime issues such as those discussed above.

If you would like to discuss anything in this article please contact:



Daniel Gill
Partner
0345 209 1674
daniel.gill@clarkewillmott.com

An interview with... Esther Woolford

Having bid a heartfelt farewell to Tim Hayden who retired after 35 years at Clarke Willmott, we are pleased to introduce you to his successor, Esther Woolford.

Esther joined Clarke Willmott in 2013 and is a partner and Solicitor Advocate specialising in agricultural and property litigation. She heads up the agricultural litigation team in Taunton.

With Covid restrictions making it difficult for us to get out and about at the summer shows, we decided to put together a short Q and A which will hopefully give you a little insight into Esther's role and experience.

Q: Tell us a little about why you were drawn to a career in law and your current role at CW.

A: I always believed in right and wrong and would try to address unfairness from an early age. This attracted me to the law and now I endeavour to right wrongs and resolve problems in my role as a litigator.

My role as a partner gives me the opportunity to manage people and be involved in the running of the business which is an added layer I enjoy.

I was delighted to be appointed as Head of the Agriculture Sector and I am looking forward to leading the practice during what is a very exciting time for farming.

Q: What drew you to work in Agricultural Law?

A: I grew up in the countryside and my family background is in both law and agriculture - my paternal grandfather was a legal executive and my maternal grandmother was a founding member of the Women's Land Army.

Q: What achievement are you most proud of?

A: Representing the claimant in a successful farming partnership dispute. The end result was that the claimant's family were able to keep the farm and stay in their family home.



© Copyright Rob Bayes Photography

Q: What do you enjoy about working in the Agriculture Sector?

A: I love rural life – and I am interested in the issues affecting the rural community. Agricultural law is challenging and varied – making each day different and fascinating – regularly dealing with property law, principles of trust, probate, tax, partnership, company law and even human rights.

Q: What challenges do you think women face in the farming industry?

A: The industry has historically been perceived as a male dominated one but Minette Batters has been President of the NFU for over three years and her leadership is paving the way for women to play key roles in shaping UK agriculture.

Q: And finally, what are your hobbies outside of work?

I have ridden since a young age and competed as a professional amateur in British Eventing at wonderful venues such as Gatcombe Park in Gloucestershire, Lulworth Estate in Dorset and Bicton Park in Devon. Now, I specialise in show jumping my homebred horse Tess and we compete regularly in British Show Jumping competitions...

To view Esther's profile, visit here <https://www.clarkewillmott.com/find-a-solicitor/esther-woolford/>



Esther Woolford

Partner

0345 209 1840

esther.woolford@clarkewillmott.com

Spotlight on... the Real Estate Sector

Our national real estate sector is one of the largest in the UK with more than 100 property lawyers. We offer first class transactional, litigation, planning & environment, telecoms, construction & infrastructure, tax, employment and restructuring advice to property investors and developers.

How could the Real Estate sector help agricultural clients and contacts?

If you have any land or properties you wish to develop, let to tenants, buy or sell for commercial purposes, then we can assist; working closely with our agricultural sector colleagues to ensure that all the intricacies of dealing with agricultural land are thoroughly dealt with throughout the process.

Here are some more specific examples of how we can help:

Development and planning

We have extensive experience in advising landowners who are entering into agreements with developers or promoters, either individually, or collectively, on an immediate or strategic basis. Such projects usually require a collaborative approach between landowners, and their lawyers,

land agents and tax advisors and our role involves project managing the process from conception through to a successful conclusion. We act for landowners on some of the largest schemes in the South West and our strong housebuilding experience makes us a key part of what makes a development sale run smoothly and successfully.

Farm Diversification

Agricultural buildings can be converted into dwellings (up to 5 per agricultural unit) or used for commercial purposes without requiring planning permission, subject to certain criteria and restrictions. Our planning team regularly advises on the eligibility for and the complexities of the rules for permitted development to enable farmers to avoid getting entrenched in the planning system whilst maximising the opportunities for diversification on their holdings.

Nitrate Trading

There is an evolving opportunity for farmers to change nitrate high fallow farming land into eco-friendly habitats and sell 'credits' in these habitats to developers, who need to provide off-site mitigation for the environmental impacts of their own developments. This may be particularly attractive in areas where the location or topography of the farmland in question results in limitation on the viable farming activities and/or other future potential development opportunities. We can assist at every stage of the process including scheme registration and eligibility, land/credit sales agreements and change of use for planning purposes.

Energy and natural resources

We advise on a range of energy projects including wind, solar, anaerobic digestion, battery storage, waste, energy plants and forestry. We regularly act for landowners on these projects and our expertise is also informed by our 20 year plus experience of acting for developers and funders in the energy sector. We therefore have an in-depth understanding of what is required in order to protect the landowner's interests and are able to anticipate the position developers will take on key issues such as security

for the removal of the renewable installation at the end of the project lifespan. Projects of this kind can produce a high return for landowners, but there are pitfalls we can help you to avoid.

Telecoms Equipment

As one of the few law firms who act solely for landowners, we routinely advise on the removal of telecoms masts, approaches made by operators for multi-skilled visits, on rights to install new masts and fibre/broadband cabling, on the renewal of mast agreements and rights to upgrade existing equipment. Our team has an unrivalled knowledge of telecoms law, we act against all the major operators and we have a proven track record in achieving positive outcomes for our landowner clients.

Get in touch

For more information about the Real Estate sector please get in touch with:



Graham McIntyre

Partner

07966 029877

graham.mcintyre@clarkewillmott.com

Public Rights of Way: Getting to Grips with Widths

Article written by
Rosie Brain, Trainee Solicitor - SQE

Introduction

It is no secret that Covid-19 restrictions have led to an increase in the use of outdoor spaces over the past 18 months or so. As a result, many footpaths have seen much heavier footfall than usual during this period.

We have previously written an article which discusses what steps landowners can take to protect their land from new public rights of way being established, in light of this increased use. Another question that we frequently receive is about the width of public rights of way. Such questions often arise when landowners are planning how to use land which has a footpath etc on it.

Where is the width of a public right of way recorded?

Public rights of way are recorded in legal documents known as the 'definitive map' and the 'definitive statement'.

- Definitive Map
 - o A definitive map is a map noting all public rights of way in a particular area. Such maps are produced and maintained by county councils and unitary authorities. The majority of these maps can be found online on county councils' or unitary authorities' websites.
- Definitive Statement
 - o A definitive statement is the written statement which accompanies a definitive map and contains important information. Such information includes the width of the public right of way when it was recorded.

However, not all definitive statements define the width of a public right of way. In such instances, Schedule 12A of the Highways Act 1980 may be referred to as containing the legal minimum and maximum widths of public rights of way. In summary:

- For a footpath which is not a field edge path, the minimum width is 1 metre and the maximum width is 1.8 metres;
- For a footpath which is a field edge path, the minimum width is 1.5 metres and the maximum width is 1.8 metres;
- For a bridleway which is not a field edge path, the minimum width is 2 metres and the maximum width is 3 metres;

- For any other public rights of way, the minimum width is 3 metres and the maximum width is 5 metres.

The width of a public right of way can be disputed and in these instances, it is possible to investigate the width and have a determination made.

How can I ensure compliance?

Landowners should make sure that they are aware of the width of any public rights of way on their land. This can be done by checking the definitive statement or by reference to the widths contained in the Highways Act 1980, as set out above.

Checking the width is especially important if you are considering placing a fence or other boundary between your land and the public right of way, as failing to do so may lead to illegal encroachment.

It is important to remember that the legal width of a public right of way may not always be the same as the position on the ground. A path may appear to be short in width but its legally recorded width may extend into useable land. Therefore, landowners should not be complacent when checking the widths of public rights of way on their land.

Landowners should also endeavour to keep the public right of way clear so that none of the surface width is impinged. This includes cutting back overhanging hedges or vegetation from their land as well as ensuring that no crops encroach.

Failing to do these things can lead to enforcement action by the local authorities who have a range of powers to preserve public rights of way and punish those who threaten them.

Conclusion

We always advise landowners that they should be aware of both the existence and also the full extent of public rights of way on their land because failing to do so can result in significant problems.

Should you wish to discuss any public rights of way matter, please contact:



Daniel Gill

Partner

0345 209 1674

daniel.gill@clarkewillmott.com

If you would like to receive future editions of **Field Talk** or if you have any comments or suggestions for the newsletter please contact our editor,
Victoria Howlett: victoria.howlett@clarkewillmott.com

Great service... Great people...

clarkewillmott.com

Clarke Willmott LLP is a limited liability partnership registered in England and Wales with registration number OC344818. It is authorised and regulated by the Solicitors Regulation Authority (SRA number 510689), whose rules can be found at <https://www.sra.org.uk/solicitors/standards-regulations/>. Its registered office is 1 Georges Square, Bath Street, Bristol, BS1 6BA. Any reference to a 'partner' is to a member of Clarke Willmott LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications and is not a reference to a partner in a partnership.